

A credit for Use Tax is provided for tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other State See the enclosed copy of 86 Ill. Adm. Code 150.310. (This is a GIL).

July 12, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter that was received by our office on June 3, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

The Department of Revenue wants to update certain information provided to agents and auditors. We need your help to ensure that the information we distribute is up-to-date.

STATE law will grant a credit for sales or use tax legally due and paid to another state if that state provides a like credit for taxes legally due and paid to our state. STATE also exempts from sales tax governments in other states if that state provides a reciprocal exemption for STATE government.

STATE taxes most services. Tax generally applies where the service is used, rather than where the service is performed or work is done. The last page of this survey asks questions on the taxation of some services and how your state determines where the tax is applied, if the service is taxable.

Please review and complete the following questionnaire. Please mail or fax your response to my attention by May 21, 1999. Thank you for your time.

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1. Does your State's law allow taxpayers a credit for sales tax legally due and paid to other States?
☐ Yes ☐ No ☐ Depends

Does this credit apply to local sales tax legally due and paid in STATE as well as the state sales tax?
☐ Yes ☐ No ☐ Depends

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Please describe your State's process and enclose a copy of the relevant statute or regulation, or provide a statutory or regulatory citation.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Illinois Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq. (1996 State Bar Edition), imposes a tax on Illinois retailers measured by a percentage of their gross receipts from sales for use or consumption. The Illinois Use Tax Act, 35 ILCS 105/1 et seq. (1996 State Bar Edition), imposes a tax on the purchaser by taxing the use of tangible personal property purchased from a retailer. When a purchase is made from an Illinois retailer (a seller who accepts purchase orders in Illinois or who fills orders from an Illinois inventory), both taxes are applicable and are complementary. That is, the Illinois retailer incurs Retailers' Occupation Tax liability on gross receipts from the sale and reimburses himself by collecting the Use Tax from the customer and retaining it.

Subsection (d) of Section 3-55 of the Illinois Use Tax Act, 35 ILCS 105/3-55, provides that the use tax does not apply to:

The use, in this State, of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other State.

See also subsection (a)(3) of the enclosed copy of 86 Ill. Adm. Code 150.310. This credit applies to state and local taxes that are imposed and collected under authority of another state.

2. Does your State's law allow taxpayers a credit for use tax legally due and paid to other States?

☐ Yes ☐ No ☐ Depends

Does this credit apply to local use tax legally due and paid in STATE as well as the state sales tax?

☐ Yes ☐ No ☐ Depends

Please see the answer to question number 1 above.

3. A taxpayer leases tangible personal property in STATE. STATE imposes a sales tax on the lease of the property, because the property was delivered to the taxpayer in STATE. The taxpayer subsequently uses the property in your state. Your state imposes a sales or use tax on the lease of the property as it is used by the taxpayer in your state.

Is the taxpayer entitled to a refund, credit, or other offset against your State's sales or use tax up to the amount of sales or use tax paid to STATE?

☐ Yes ☐ No ☐ Depends Explain

Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Rental charges for a sublease are also not subject to tax in Illinois. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See Subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Please note that Under Illinois law, lessors may not "pass through" their tax obligation on to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

4. A taxpayer purchases property in STATE for use in its business in your state. The taxpayer pays STATE sales tax on the purchase in STATE. Your state assesses use tax on the property when it is brought back to your state.

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Is the taxpayer entitled to a refund, credit, or other offset against your State's sales or use tax up to the amount of sales or use tax paid to STATE?

☐ Yes ☐ No ☐ Depends Explain

Please see the answer to question number 1 above.

5. Windows are purchased by a contractor in STATE, with possession taken in STATE. STATE does not allow contractors to purchase materials for a construction project for resale. Sales tax is charged on the purchase. The contractor then takes the windows to your state to install in a home.

Is the taxpayer entitled to a refund, credit, or other offset against your State's sales or use tax up to the amount of sales or use tax paid to STATE?

☐ Yes ☐ No ☐ Depends Explain

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of construction contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners.

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If the contractors did not pay the Use Tax liability to their suppliers, those contractors must self-assess their Use Tax liability and pay it directly to the Department. If those contractors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See Subsection (a)(3) of 86 Ill. Adm. Code 150.310.

6. ZZ Plumbing, from STATE, has a retail store and does installation and repair of plumbing fixtures. ZZ removes items from their tax unpaid inventory in STATE to use in a project in your State. The materials include pipes, valves, sinks and faucets. ZZ will install these items in a home in your state. STATE assesses use tax on

items taken from inventory to be used in a realty improvement project.

Is the taxpayer entitled to a refund, credit, or other offset against your State's sales or use tax up to the amount of sales or use tax paid to STATE?

☐ Yes ☐ No ☐ Depends Explain

Please see the answer to question number 5 above.

7. Handy Plumbing, from your state, has a retail store and does installation and repair of plumbing fixtures. Handy removes items from their tax unpaid inventory in your state to use in a project in STATE. The materials include pipes, valves, sinks and faucets. Handy will install these items in a home in STATE.

Does your state assess sales or use tax on the materials removed for installation in a project in another state?

☐ Yes ☐ No ☐ Depends Explain

Illinois Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. When retailers take an item from inventory and "use" the item, a Use Tax liability is incurred. However, the Department's administrative rules provide that Use Tax does not apply to "the temporary storage in this State of building materials and fixtures which are acquired either in this State or outside this State by an Illinois registered combination retailer and construction contractor, and which such purchaser thereafter uses outside this State by incorporating such property into real estate located outside this State." See subsection (a)(5) of the enclosed copy of 86 Ill. Adm. Co 150.310. For other materials or items, see the answer to question number 9 below.

8. Service Helpers is a corporation headquartered in STATE. The headquarters purchases items in bulk to reduce the purchase price. These items are stored at a warehouse in STATE until needed at the various store locations. When needed, items are pulled from storage and shipped to the store location. Items include adding machines, computers, and various office supplies - paper, pens, staples, etc. STATE statutes require use tax be paid on these items if sales tax was not paid at the time of purchase.

Is the taxpayer entitled to a refund, credit, or other offset against your State's sales or use tax up to the amount of sales or use tax paid to STATE?

☐ Yes ☐ No ☐ Depends Explain

Please see the answer to question number 1 above.

9. Kozy Restaurant, with locations in several states, purchases supplies and equipment for their use. These supplies and equipment are stored in a warehouse in your State until needed, then distributed to the various locations, including a location in STATE.

Does your state assess sales or use tax on the items that are stored in your State but later used in STATE.

☐ Yes ☐ No ☐ Depends Explain

Section (a)(4) of 86 Ill. Adm. Code 150.310 (enclosed) provides that no tax applies to "the temporary storage, in this state, of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State...."

In order to document this exemption, purchasers of such tangible personal property should give certificates to their vendors stating that the tangible personal property is acquired outside Illinois and brought into Illinois only temporarily, and that subsequent to such temporary storage in Illinois, the tangible personal property will be shipped out of Illinois, and will be used solely outside the State of Illinois.

Please note that if tangible personal property is acquired in Illinois and is stored in Illinois before being used solely outside Illinois, then the items will be subject to Illinois Use Tax on the cost price of the items. Please also note that if purchase orders for tangible personal property are accepted in Illinois, the tangible personal property is not acquired outside Illinois, even if it is delivered in Illinois from the vendors' warehouse outside Illinois.

10. Does your state exempt from sales tax STATE units of government that make purchases in your State?

☐ Yes ☐ No ☐ Depends Explain

Pursuant to 86 Ill. Adm. Code 130.2080, enclosed, sales of tangible personal property made to governmental bodies (Federal, State, local, or foreign) are not subject to Retailers' Occupation Tax (sales tax). In order to make a tax exempt purchase, governmental bodies must have an active exemption identification number issued by the Department. It is important to note that only sales of tangible personal property invoiced to the governmental body itself are exempt. Sales made to individual government employees are generally subject to tax, even though the employees may be traveling on government business. Please see the enclosed

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copy of 86 Ill. Adm. Code 130.2007 for information on applying for an exemption number.

In addition, organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification "E" number. See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that this State recognizes that the organization qualifies as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of its organizational purpose. Please be aware that only sales to the organization holding the "E" number are exempt, not sales to individual members of the organization.

11. The city of Sioux Falls, STATE, purchases equipment from a supplier in your State. This equipment includes saws, drills, sanders, etc.

Does your state assess sales tax on the purchases made with city funds for the city's use

☐ Yes ☐ No ☐ Depends Explain

Please see the answer to question number 10 above.

12. STATE exempts government owned schools. STATE exempts purchases by government owned schools from another state if that state provides the same exemption to STATE schools.

If a representative from a STATE school attends a convention in your state and purchases supplies for their school, using school funds, does your state's sales tax apply to the items purchased by the school for the school's use?

☐ Yes ☐ No ☐ Depends Explain

Please see the answer to question number 10 above.

13. A basketball team from a STATE state supported university attends a basketball game in your state. The team bus blows a tire and the team stays at a motel in your state. The university pays the motel directly from university funds.

Does sales tax apply to the motel paid by University funds?

☐ Yes ☐ No ☐ Depends Explain

We have enclosed a copy of 86 Ill. Adm. Code 480.101, which explains the nature, rate and scope of the Hotel Operators' Occupation Tax Act. As explained

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in Section 480.101(b)(3), hotel operators incur this tax on room rentals to entities that would otherwise be exempt from sales tax (i.e., entities such as exclusively charitable, religious, or educational groups, or governmental bodies that possess exemption identification numbers).

It is important to remember in connection with this tax that this is a tax imposed upon hotel operators and not upon hotel guests. The Hotel Operators' Occupation Tax Act allows hotel operators to collect an amount from their customers that represents reimbursement for the hotel operators' tax liability. Consequently, there is no tax imposed upon guests from which they can be exempted. The fact that these guests may represent entities that hold exemption identification numbers issued by the Department does not exempt them from reimbursement.

- 14. the university has the tire repaired at a repair shop in your State. The repair bill, labor and parts, is paid by government funds.**

Does sales tax apply to the tire repair paid by university funds?

☐ **Yes** ☐ **No** ☐ **Depends** **Explain**

Please see the answer to question number 10 above, and the discussion of liabilities incurred under the Service Occupation Tax Act described below following question number 15. See the enclosed copy of 86 Ill. Adm. Code 140.125.

- 15. The university purchases meals for the team, again paying with government funds.**

Does sales tax apply to the meals paid by university funds

☐ **Yes** ☐ **No** ☐ **Depends** **Explain**

Please see the answer to question number 10 above.

The Department is unable to respond to your questions regarding the taxation of services in the manner requested. We hope the following general information regarding the application of the Service Occupation Tax Act will be helpful.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers.

Depending upon which tax base the servicemen choose to calculate their liability, their customers' recognition as a tax-exempt entity in Illinois will

impact the servicemens' Service Occupation Tax liability. See the enclosed copy of 86 Ill. Adm. Code 140.125. If the servicemen choose either of the first three methods described above and their customers have valid exemption numbers (E-numbers) issued by the Department, those customers incur no Service Use Tax liability and the Servicemen incur no Service Occupation Tax liability on those sales. Please note that, currently, servicemen that choose the fourth method are paying their own Use Tax liability and the status of their customer does not affect that liability.

It is the Department's opinion that the seller's acceptance of a purchase order or contracting action in the making of a sales or service contract is the most important single factor in the occupation of selling or providing service. See for example part (b)(1) of the enclosed copy of 86 Ill. Adm. Code 270.115. Out-of-State servicemen who do not accept purchase orders in this State may still have a Service Use Tax collection obligation if those servicemen have a physical presence in Illinois. However, no local tax will need to be collected because the sale (purchase order acceptance) occurred outside of the State.

The transfer of tangible personal property as an incident to a sale of service that results from the acceptance of a purchase order or other contracting action in a home rule county and/or municipality is subject to any corresponding Home Rule County Service Occupation Tax and/or the Home Rule Municipal Service Occupation Tax for that location. If a purchase order is accepted outside this State but the property is in the inventory of a serviceman located in a home rule county or municipality at the time of the sale and is delivered in Illinois to the purchaser, the sale is subject to the corresponding Home Rule County Service Occupation Tax or Home Rule Municipal Service Occupation Tax. See part (b)(1) of Section 270.115.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.